



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

ELP
Docket No. 7216-99
6 March 2000

[REDACTED]

Dear [REDACTED]:

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 1 March 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you reenlisted in the Navy on 9 July 1968 for six years as a GMG3 (E-4). At the time of your reenlistment, you had completed nearly three years of prior honorable service and received the Vietnam Service Medal for service on board the USS HOLLISTER (DD-788).

You served without incident until 19 March 1969 when you were convicted by special court-martial of a 121 day period of unauthorized absence (UA) from 9 November 1968 to 13 March 1969. You were sentenced to confinement at hard labor for three months, forfeitures of \$137 per month for three months, and reduction in rate to GMGSN (E-3).

On 3 July 1969, you made a voluntary statement to the Naval Investigative Service (NIS) disclosing extensive use of

marijuana, LSD, and other controlled substances from 1966 to 1968. On 23 July 1968, you went UA again and remained absent until you were apprehended by civil authorities on 14 October 1969.

On 21 November 1969 you were convicted by a second special court-martial of the foregoing 83 day period of UA. You were sentenced to confinement at hard labor for four months and reduction in rate to GMGSA (E-2).

On 5 January 1970 you were notified that you were being considered for discharge under other than honorable conditions due to your admitted use of drugs. You were advised of your procedural rights and waived your rights to be represented by counsel and to present your case to an administrative discharge board (ADB). Thereafter, the commanding officer recommended an undesirable discharge by reason of unfitness due to drug addiction. On 20 January 1970, an enlisted performance evaluation board convened in the Bureau of Naval Personnel and recommended an undesirable discharge by reason of unfitness. The Chief of Naval Personnel approved the recommendation and you received an undesirable discharge on 27 February 1970.

On 2 June 1977, your undesirable discharge was recharacterized to a general discharge under the Department of Defense Special Discharge Review Program (SDRP). However, the SDRP met with adverse congressional reaction and led to the enactment of legislation that precluded the award of veterans' benefits to any individual whose discharge was upgraded under any program with automatic upgrading criteria. Cases such as yours had to be re-reviewed under uniform standards to determine whether the individual's service would have been upgraded under by a regular Navy Discharge Review Board (NDRB). On 25 May 1978, you were advised that the NDRB reviewed your case as required by Public Law 95-126 and determined that you would not qualify for upgrading under the uniform standards for discharge review. The general discharge you received from the previous review under the SDRP was not changed, but you were advised that under the law, you may no longer be eligible for veterans benefits. A second review of your case again by NDRB on 17 September 1984 also resulted in no further change to your discharge.

The record reflects that the Veterans Administration has advised you that your service from 29 July 1965 to 8 July 1968 could not be considered a complete and unconditional separation because your discharge on 8 July 1968 was conditional for the purpose of early reenlistment. The normal date of expiration of your enlistment was 4 January 1969. However, on that date, you had been UA since 9 November 1968, and did not return to military jurisdiction until 13 March 1969. Six days later you were

convicted by special court-martial. The granting of veterans' benefits rests solely with the Department of Veterans Affairs (DVA).

In its review of your application the Board carefully weighed all potentially mitigating factors such as your prior honorable service, Vietnam service, and the fact that it has been more than 20 years since you were discharged. The Board noted the testimony you presented to the NDRB in September 1984, specifically, that you lied to the NIS when you said you were using drugs because you wanted to be discharged, and that you suffer from post-traumatic stress problems due to your ship being fired upon while off the coast of Vietnam. In support of your application, you provide a September 1999 evaluation from a VA psychologist that diagnosed you with delayed chronic post traumatic stress disorder (PTSD) and alcohol dependence in remission. The Board noted your contention that you suffered from PTSD while on active duty and the Navy should have provided you psychiatric care.

The Board concluded that the foregoing factors and contentions were insufficient to warrant recharacterization of your second period of service given your record of two special court-martial convictions for two prolonged periods of UA totalling more than six months, and your extensive use of drugs. The Board noted the aggravating factor that you claimed to the NDRB that your discharge was based on false information you provided to NIS. If that is so, neither NDRB nor this Board can determine what your true story is, the one you gave to the NIS to extricate yourself from your enlistment, or the one you gave to the NDRB. It is well established in law that an individual who perpetrates fraud in order to be discharged should not benefit from the fraud when it is later discovered. Additionally, since the onset of your PTSD was diagnosed as "delayed", the Board concluded that your contention that you suffered from PTSD while on active duty is without merit. While PTSD may be mitigating, you have provided insufficient evidence for the Board to conclude that it impaired your ability to serve. The Board concluded that the character of your service was undesirable and affirmation of the general discharge issued under the SDRB program, which would entitle you to veterans' benefits is not warranted. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records.

Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director